



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Mines, Minerals, and Energy
<b>VAC Chapter Number:</b>	4 VAC 25-20
<b>Regulation Title:</b>	Board of Coal Mining Examiners Certification Requirements
<b>Action Title:</b>	Proposed
<b>Date:</b>	March 10, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Board of Coal Mining Examiners Certification Requirements, 4 VAC 25-20 establishes rules by the Board of Coal Mining Examiners (BCME) to ensure that miners are trained and certified to safely perform the duties and responsibilities that come with working on surface and in underground coal mines.

The certification requirements for coal miners ensure that miners are certified to perform specialized tasks required to mine coal. These requirements address application and examination requirements, reciprocity between states, continuing education, and specialized certification requirements designed for positions with special responsibilities underground and at surface mines such as blasters, shot firers, electricians, hoisting engineers, foremen, inspectors, diesel engine mechanics, first aid and first aid instructors, surface facilities foreman, automatic elevator

operators, gas detection, general coal miners, BCME instructors, and on-site examination requirements.

Substantive changes to the regulation include removing the condition from the regulation that required the division to mail certificate holders notices reminding them of certification dates and deadlines regarding completion requirements.

When administering examinations in a segmented format, a miner will be required to retake any “sections” failed on completion of all segments. This will represent a first re-take of an examination.

Provisions addressing reciprocal agreements with other states are being amended to require miners to meet both conditions set forth by the reciprocating party and meet Virginia-unique requirements.

Underground shot firers will be required to re-certify every five years by providing proof of experience, examination, or continuing education.

Underground electrical repairman requirements would exclude performing electrical work at surface locations.

Hoisting engineers will be required to re-certify every five years by providing proof that they have been performing hoisting duties in their work or passing a practical exam.

The proposed regulation requires instructors to use applicable specialized equipment to help reinforce their teaching.

The miner will be required to have a practical knowledge of mine gases as part of their gas detection qualification.

The regulation is being amended to provide that surface miners without underground mining experience cannot work underground without the required training and knowledge.

BCME training and continuing education instructors are to be knowledgeable of or certified in the areas they teach. In addition students will be able to critique instructor effectiveness.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the*

*Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The Board of Coal Mining Examiners Certification Requirements are promulgated at the discretion of Board of Coal Mining Examiners and are not federally mandated. However, the federal MSHA accepts state certification in lieu of establishing federal certifications

The Board of Coal Mining Examiners (BCME) derives its authority to promulgate this regulation from Virginia Code Sections 45.1-161.28, 45.1-161.29, and 45.1-161.34.

At section 45.1-161.28, the BCME shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

At section 45.1-161.29, the Board of Coal Mining Examiners may require examination of applicants for certification but shall require certification of mine inspectors. Also, the Board may require additional information as may be necessary to determine the competency and qualifications of candidates. The section requires qualifications for any certification and rules, conditions, and regulations for examinations.

At section 45.1-161.34, the BCME shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications.

The Code of Virginia, including the above citations, may be viewed at <http://leg1.state.va.us/000/src.htm>.

The Office of the Attorney General has certified that the Department of Mines, Minerals, and Energy and the Board of Coal Mining Examiners has the statutory authority to promulgate the proposed regulation. This regulation comports with the Code of Virginia

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The Board of Coal Mining Examiners Certification Regulations, 4 VAC 25-20 are being amended as a result of periodic review. During this review, the Board of Coal Mining Examiners, with input from industry representatives and the DMME found that minor edits were needed to bring the regulation up to date with the Code of Virginia and current industry standards.

During review of the regulation, the department asked the BCME to remove the condition from the regulation that required the division to mail certificate holders notices regarding pending continuing educational requirements. Because miners frequently move around to different companies, it is often difficult to pinpoint exactly where a particular miner is working or living. Placing the responsibility of monitoring certifications on the individual miner provides cost savings to the department and the taxpayers. This should result in a more effective and responsible pool of certified miners.

When administering examinations in a segmented format, a miner will be required to retake any “sections” failed on completion of all segments. This will represent a first re-take of an examination. The regulation includes changes that allow certificate holders increased flexibility to meet continuing education requirements.

Regarding proposed regulatory requirements that outline reciprocal agreements, the workgroup chose to broaden the scope of the regulation to meet conditions set forth by the reciprocating party and the state of Virginia. It was decided that having broader reciprocating requirements would enable miners with specialized backgrounds the flexibility to use their skills in a wider range of locations.

Previously there was no requirement for re-certification of underground shot firers. The board felt that the best alternative to this was to re-certify these individuals every five years and to require proof of experience, examination, or continuing education.

Underground electrical repairman requirements would exclude performing electrical work at surface locations. This is because the responsibilities vary considerably for underground and surface electricians.

Hoisting engineers will be re-certified every five years and the hoisting engineer will be required to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

Advanced first aid certification needed a clear date when the certification expired as opposed to the current language.

In the current regulation, instructors were not explicitly required to use equipment that was necessary to teach advanced first aid. Some instructors were teaching without this equipment. The proposed regulation requires instructors to use any specialized equipment to help reinforce their teaching.

Miners will be required to have a practical knowledge of mine gases. This will provide more thorough mine gas monitoring.

In the current regulation addressing general coal miner certifications, there was no clear distinction between job responsibilities at surface and underground mines. For clarity, the regulation is being amended to ensure that surface miners without underground mining experience are not working underground without the required training and knowledge.

Not all instructors that teach BCME training and continuing education courses are certified in the areas they teach. In addition the students are not given the opportunity to critique the instructors teaching effectiveness. Therefore the regulation is being amended to ensure the instructor is knowledgeable and able to effectively teach the required courses.

The goals of the agency are to ensure through examination and certification of persons working on coal mines, the safest environment for workers employed at coal mines without restricting productivity or efficiency. The regulation is necessary in that it establishes procedures and standards of certification for miners and workers in areas of specific responsibilities at coal mines.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

4 VAC 25-20-20 through 4 VAC 25-20-220, Specific sections relating to the mailing and receiving of notifications to certificate holders are being amended. The recommendation to not mail notices was proposed and accepted by the BCME because many miners do not leave a forwarding address when they move or leave a job. In many instances hundreds of notification mailings are sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed that the operators and the DMME would benefit if they made available the information on a requested basis, leaving maintenance notices for certifications up to the responsible individuals. This information can also now be checked on DMME's Internet site.

4 VAC 25-20-20 E., The section is being amended to be consistent with changes in the Code of Virginia. The code does not specify any particular form of payment.

4 VAC 25-20-30 F., The section is being amended so that an applicant only must retake the failed "sections" of the exam segment as opposed to the entire examination. The miner would take the first, second, and third segment of the exam. The sections that are failed from each segment are combined for the second retake. If the section retake is failed, the miner would then have to retake the entire examination on the third attempt. If any section is failed during the third attempt, the applicant must wait a year from the date of the first attempt to restart the examination process.

4 VAC 25-20-40, The section is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.

4 VAC 25-20-90, The section is being amended to re-certify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.

4 VAC 25-20-100, The section is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would exclude performing electrical work at surface locations. This is consistent with current federal MSHA standards.

4 VAC 25-20-140, The section is proposed to have hoisting engineers be re-certified every five years and for the hoisting engineer to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

4 VAC 25-20-210, The section is being amended to provide a clear date when the advanced first aid certification would expire.

4 VAC 25-20-220, The section is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.

4 VAC 25-20-250, The section is being amended to require the applicant to demonstrate a practical knowledge of mine gases in addition to knowing how to operate gas monitoring equipment.

4 VAC 25-20-255, The section is being amended so there is a clear distinction between required skills that qualifies general coal miners to work at surface or underground mines. A miner with a surface certification is not certified to work underground, but a miner with an underground certification may work at the surface.

4 VAC 25-20-259, The section is being amended to ensure that BCME instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses. The changes also allow students to critique the instructor's effectiveness.

4 VAC 25-20-390, The section is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that would be unrelated to the violations at the mine.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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This regulation presents advantages and disadvantages to the regulated community. There are advantages that provide for alternative methods of payment for application fees. A disadvantage to the public and the regulated community is that the division will no longer mail certification expiration notices to businesses and individuals that require that the division search to find the individual. The notice will only be sent to the last known address.

One advantage to the miner is that certification some exams may be segmented as opposed to taking the entire exam at one setting. Any sections failed during a segment will be retaken at the completion of the process.

Also, the regulation addresses the requirements for certification of reciprocal agreement with other states.

For shot firers and hoisting engineer certificate holders, an added advantage to the mining community includes the option for the certificate holder to re-certify in most cases by testing, continuing education, or proof of experience. **Student choosing to maintain certification by retesting shall meet all requirements of initial certification except work experience will not have to be resubmitted.**

An advantage to the regulated community is the requirement that certification instructors have equipment necessary to conduct miner training. This can become a disadvantage to various instructors because some may be required to acquire the equipment. In addition, miners that undergo training will be able to critique their instructors. This should provide an advantage to the regulated community because **feedback from students generally encourages improved instructor skills, thus ensuring better training provided to the industry.**

Lastly, when mine inspectors give on-site examinations to mine foremen, the questions asked to the examinee will be drawn from a pool of questions as opposed to the inspector writing out the questions when there is a violation or condition that warrants the action. This should be advantageous to the inspector administratively and may reduce any potential stress between the inspector and the foreman related to the examination or the violation.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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(a) The projected cost to the state to implement and enforce the proposed regulation:

- This would require a projected 28 hours by DMME to make needed changes to the computer system  $\$40.00 \times 28 = \$1,120$
- Design forms - two forms @  $\$125.00$  - total  $\$250.00$
- Notifications of requirement change (both certifications)  $3912 \times .37 = \$1,337.44$  (for mailing)
- Projected Hoisting Engineer estimate 10% to renew -  $69 \times 10$  minutes for each input/process 11.5 hours and Shot Firers estimate 10% to renew -  $1070 \times 10$  minutes for each input/process 18.0 hours. Clerical cost  $\$13.50/h \times$  (approx) 30 hours (for both certifications) =  $\$405.00$ . Note: Staff in place to implement.
- Training Development time one hour for 40 field personnel @  $\$36.00/hr$ ;  $\$1440.00$ .
  - (i) Fund Source/Fund Detail: General Fund; 0100
  - (ii) Budget Activity: 55503
  - (iii) One-time cost vs. on-going expenditures: Minimal to issue renewals

(b) The projected cost of the regulation on localities: No cost to localities.

(c) A description of the individuals, businesses or other entities that likely are to be affected by the regulation:

- Certified Shot Firers, Hoisting Engineers and mine operators that require the services of these employees
- Trainers will be required to purchase training equipment if they do not have it presently.

(d) The agency's best estimate of the number of such entities that will be affected:

- Hoisting Engineers: 345 (presently certified), it is estimated that 10% will re-certify.
- Shot firer: 3567 (presently certified), it is estimated that 10% will re-certify.
- Trainers: less than 10

(e) The projected cost of the regulation for affected individuals, businesses, or other entities:

- We have projected approximated 1139 (10% of each category) would require training (if training is an option for renewal - training should be no more than 2 hours).  $1139 \times \$20.00 = \$2,780$  for retraining cost.
- Cost to mail certification if 1139 re-certified  $1139 \times .37 = \$421.43$

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

4 VAC 25-20-20 through 4 VAC 25-20-220, Specific sections relating to the mailing and receiving of notifications to certificate holders are being amended. The recommendation to not mail notices was proposed and accepted by the BCME because many miners do not leave a forwarding address when they move or leave a job. In many instances hundreds of notification mailings are sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed that the operators and the DMME would benefit if they made available the information on a requested basis, leaving maintenance notices for certifications up to the responsible individuals. This information can also now be checked on DMME's Internet site.

4 VAC 25-20-20 E., The section is being amended to be consistent with changes in the Code of Virginia. The code does not specify any particular form of payment.

4 VAC 25-20-30 F, The section is being amended so that an applicant **participating in segmented testing would take all segments of the exam.** The sections that are failed from each segment are combined for the second retake. If the section retake is failed **on the second attempt** the miner would then have to retake the entire examination **on the third attempt.**

4 VAC 25-20-40, The section is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.

4 VAC 25-20-90, The section is being amended to re-certify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.

4 VAC 25-20-100, The section is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would exclude performing electrical work at surface locations.

4 VAC 25-20-140, The section is proposed to have hoisting engineers be re-certified every five years and for the hoisting engineer to prove that they have been performing hoisting duties in their work or pass a practical demonstration of their skills.

4 VAC 25-20-210, The section is being amended to provide a clear date when the advanced first aid certification would expire.

4 VAC 25-20-220, The section is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.

4 VAC 25-20-250, The section is being amended for the miner to have a practical knowledge of mine gases in addition to knowing how to operate the gas monitoring equipment.

4 VAC 25-20-255, The section is being amended so there is a clear distinction in the skills between miners that are qualified to work at surface or underground mines.

4 VAC 25-20-259, The section is being amended to ensure that BCME instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses.

4 VAC 25-20-390, The section is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that would be unrelated to the violations at the mine.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Specific alternatives to the existing regulation were considered as part of the periodic review process.

An alternative to mailing completion requirement and deadline notices to certificate holders was considered. The recommendation to not mail notices was proposed and accepted by the work committee. The reason was that in more instances than not, miners tend to be transient and do not usually leave a forwarding address. Because of this, many hundreds of notification mailings are returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed with the alternative that the operators and the DMME would benefit if they made information on suspended or revoked certifications available on a requested basis to interested parties. The maintenance of certifications would be left to the responsible individuals. Miners can now check the status of their certificates through DMME's Internet site.

The workgroup considered policies for retaking sections of the exams failed when the exam is administered in segments. The sections that are failed from each segment are combined for the second retake if any section is failed on the second take the entire exam would be taken on the third attempt. If any section is failed during the third attempt, the applicant must wait a year from the date of the first attempt to restart the examination process.

As an alternative to current regulatory requirements that outline reciprocal agreements, the workgroup chose to broaden the scope of the regulation to meet conditions set forth by the reciprocating party and the state of Virginia. It was decided that having broader reciprocating requirements would enable miners with specialized backgrounds the flexibility to use their skills in a wider range of locations.

Alternative measures were considered when amending the underground shot firer certification. Previously there was no requirement for re-certification of underground shot firers. The board felt that the best alternative to this was to re-certify these individuals every five years and to require proof of experience, examination, or continuing education.

Underground electrical repairman requirements alternatively would exclude performing electrical work at surface locations. This is because the responsibilities vary considerably for underground and surface electricians.

The alternative to not having to be re-certified as a hoisting engineer and have any continuing education was to have hoisting engineers be re-certified every five years and for the hoisting engineer prove that they have been performing hosting duties in their work or pass a practical demonstration of their skills.

Advanced first aid certification needed a clear date when the certification expired as opposed to the alternative.

In the current regulation, instructors were not required to use equipment that was necessary to teach advanced first aid. The alternative to this was to require instructors to use this equipment to help reinforce their teaching.

As an alternative to having a miner know how to monitor for mine gases, the miner would need to have a practical knowledge of mine gases. This will provide more thorough mine gas monitoring.

In the current regulation addressing general coal miner certifications, there was no clear distinction between miner job responsibilities at surface and underground mines. For clarity, it is recommended that the regulation be amended to ensure that surface miners without underground mining experience are not working underground without the required training and knowledge.

Not all instructors that teach BCME training and continuing education courses are certified in the areas they teach. In addition the students are not given the opportunity to critique the instructors teaching effectiveness. Therefore the recommended alternative is to amend the regulation to ensure the instructor is knowledgeable and able to effectively teach the required courses.

As an alternative to having an inspector write out ten questions to be tested on during an on-site mine foreman examination, the inspector is to choose ten questions from a pool of questions that relate to the violations found at the mine.

## Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comments were received.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The Department of Mines, Minerals, and Energy, through examination of the regulation and relevant input and review has determined that this regulation is clearly written and easily understandable by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Department of Mines, Minerals, and Energy expects to publish the final version of the Board of Coal Mining Examiners Certification Requirements in December of 2003. According to the most recent applicable Executive Order, EO 21 (2002), the regulation will be reviewed and re-evaluated to determine if the regulation should be continued, amended, or terminated no more than 4 years from the effective date (1/2004), unless requested earlier by the Counselor of the Governor.

The specific and measurable goals of the review will include a determination of regulatory effectiveness. This process will begin with periodic review notification to the public for comments through the Regulatory Town Hall for a minimum of 21 days. No later than 90 days from the close of the public comment period, the agency will submit its report for Executive Review through the Town Hall along with its recommendation to keep as is, amend or to terminate the regulation.

If the decision is to amend the regulation, the Notice of Regulatory Action will be published in the Virginia Register to begin the regulatory process.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The regulation is essential to protect workers at coal mine sites by preventing health problems, accidents and fatalities in work that is inherently dangerous. Improper conditions and actions are a significant cause of injuries and fatalities.

The regulation sets forth requirements for the certification of individuals who work at coal mine sites. A knowledgeable worker, a safe work environment and work practices reduce accidents that may result in reduced family income and increased family stress. Reducing accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around coal mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.